IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 131 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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N.K.SHAH EXECUTIVE ENGINEER - Applicant
Versus
STATE OF GUJARAT AND OTHERS - Respondents

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Appearance :
MR DHAVAL M BAROT for Applicant.
MS NANDINI JOSHI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No. 1.
MR NK PAHWA, FOR M/S THAKKAR ASSOCIATES for Respondent No. 2.
MR PRAKASH K JANI for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 27/04/2006

ORAL JUDGMENT

1. The present Revision Application is directed against the judgment and order dated 28-11-2003 passed by the learned Chief Judicial Magistrate, Palanpur in Criminal Case No. 72 of 1992, by which the learned Chief

Judicial Magistrate acquitted the accused for the offences punishable under Sections 409, 468, 471, 477 (A) read with Section 114 of the Indian Penal Code, 1860.

2. Mr. Dhaval M. Barot, learned Advocate for the applicant, submitted that the impugned judgment and order passed by the learned Magistrate is illegal, improper and without application of mind. The learned Advocate submitted that the learned Magistrate has not appreciated the evidence on record of the case in it's true perspective while acquitting the accused. The learned Magistrate ought to have accepted the evidence of the Finger-print Expert, which established the case against respondent Nos. 2 and 3. The learned Magistrate has further erred in holding that since the complainant had only lodged the FIR and not taken the custody of the books of accounts and that as he has not himself checked the books of accounts, the same has no value. The learned Magistrate has grossly erred in holding that the complainant had no personal knowledge of the alleged acts committed by the respondents. The learned Magistrate ought to have held that the evidence adduced by the prosecution was sufficient enough to establish the offences against respondent Nos. 2 and 3. Thus, it is

submitted by the learned Advocate that as the judgment and order is not based on documents and the oral deposition adduced by the prosecution, the same is liable to be quashed and set aside.

3. As against the above mentioned submissions, Ms. Nandini Joshi, learned Additional Public Prosecutor representing the State, submitted that the State has not preferred any appeal against the order of acquittal passed by the learned Magistrate and the State has accepted the order of acquittal. The learned Additional Public Prosecutor has placed reliance on the letter dated 23-06-2006 written by the Under Secretary of the Legal Department. It is, therefore, prayed that the Revision Application needs to be dismissed.

4. On behalf of respondent Nos. 2 and 3, it is submitted that the revisional powers of the Hon'ble Court are very restricted and the Court can interfere only while exercising revisional power if any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court and, therefore, the revision preferred by the petitioner is liable to be rejected.

5. Taking into consideration the averments made in the application and on perusal of the judgment rendered in Criminal Case No. 72 of 1992 dated 28-11-2003, it becomes clear that as the prosecution could not prove the case in a conclusive manner by adducing cogent and clinching evidence, the accused came to be acquitted by the learned Magistrate. The learned Magistrate has dealt with that aspect in an elaborate manner in the judgment. Entrustment of property to respondent No. 3 has not been conclusively established. Respondent No. 3 has only aided in the commission of offence but no allegation is made against respondent No. 3 that he had made corrections in the *challans*, vouchers and accounts. Therefore, respondent No. 3 has not committed any offence with regard to the documents. Respondent No. 2 was not entrusted the property and, therefore, he has not commmitted offence punishable under Section 409 IPC. The opinion given by the Handwriting Expert also does not inspire the confidence of the Court so as to fasten the liability on respondent No. 2 and as the prosecution could not prove the involvement of respondent Nos. 2 and 3 in a conclusive manner by adducing cogent and clinching evidence, the learned Magistrate has acquitted both the

respondents. Even the material documents which are produced on behalf of the prosecution could not establish the involvement of the respondents in a conclusive manner. In view of the facts and circumstances of the case and on perusal of the reasoning given by the learned Magistrate, this Court finds it difficult to interfere in Criminal Revision Application filed by the complainant against the order of acquittal passed by the learned Magistrate. As laid down by the Hon'ble Apex Court in **Hydru Vs. State of Kerala, (2004) 13 SCC 374**, in a revision against the acquittal by a private party, the powers of the Revisional Courts are very limited. The Court can interfere only if any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court. If upon the appraisal of the evidence, two views are possible, then it is not permissible even for the Appellate Court to interfere with the same, much less in revision where the powers are much narrower. In view of the above mentioned ratio, this Court finds it difficult to interfere with the order passed by the learned Magistrate in a revisional jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973.

6. For the foregoing reasons, as there is no procedural irregularity made by the learned Magistrate and the evidence on record of the case has not been overlooked by the learned Magistrate, the Revision Application preferred by the petitioner is liable to fail. Hence, the same is rejected. Notice is discharged.

[H. B. ANTANI, J.]

/shamnath